

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

\* \* \* \* \*

BOARD OF TRUSTEES, HILL COUNTY	)	
COUNTY SCHOOL DISTRICT NO. 87J-L	)	OSPI NO. 255-95
BOX ELDER, MONTANA,	)	
	)	
Appellant,	)	<b><u>DECISION &amp; ORDER</u></b>
	)	
vs.	)	
	)	
LAWRENCE GRANBOIS	)	
	)	
Respondents.	)	

\* \* \* \* \*

The Board of Trustees of Hill County School District No. 87J-L, Box Elder, Montana (School District) is appealing the May 15, 1995 Order of the Hill County Superintendent. The County Superintendent had allowed an appeal by Lawrence Granbois (Granbois), a former classified employee of the School District.

Granbois was employed by the School District as a bus mechanic. Granbois was notified by the School Superintendent that she was recommending his dismissal. On December 7, 1994, the School District Board of Trustees (Board) met and accepted the School Superintendent's recommendation of dismissal. Granbois was notified of this action. By letter dated February 23, 1995, he appealed to the County Superintendent, on excess of days from the date of the board decision. The School District filed a motion to dismiss the action for lack of jurisdiction which the County Superintendent denied.

## **STANDARD OF REVIEW**

Motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976).

## **DECISION AND ORDER**

Granbois does not dispute the fact that the trustees made their decision to dismiss him on December 7, 1994. He also does not dispute the fact that the letter he sent to the County Superintendent was dated February 23, 1995, in excess of seventy days from the date of the Boards decision. The School District moved to dismiss this action, in part, because the appeal was filed more than 30 days from the date of the Boards decision in contravention of Section 10.6.103(2), ARM.

The County Superintendent determined that she had jurisdiction to hear the matter in any event. The limitation on time to file an action has been established. It is 30 days from the date of the board decision. Granbois' appeal was clearly outside the limitation period. Therefore, the County Superintendent lacks jurisdiction in this matter. The County Superintendent incorrectly concluded that the time for appealing the Trustees' decision to dismiss Granbois was not determinative of the outcome of this appeal. The decision of the County Superintendent is overruled.

## **MEMORANDUM OPINION**

The School District filed its Motion to Dismiss the Granbois appeal relying in part on Section 10.6.103(2), ARM that states:

(2) A school controversy contested case shall be commenced

by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the governing authority of the school district is made. (Emphasis added).

The appeal was taken pursuant to Section 10.6.104(4), ARM that provides:

(4) A determination by the county superintendent as to jurisdiction may be immediately appealed to the state superintendent.

These rules were promulgated by the state superintendent pursuant to a directive of the state legislature that: "In order to establish a uniform method of hearing and determining matters of controversy arising under this title (Title 20 MCA Education), the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state." Section 20-3-107(4), MCA.

These administrative rules do not add requirements which are contrary to the statutory language or engraft additional provisions envisioned by the legislature. Board of Barbers, Etc. v. Bia Sky College, 192 Mont. 159, 161, 626 P.2d 1269, 1270-71 (1986), see also Section 2-4-305(5) and (6), MCA. In addition, an administrative agency's interpretation of a statute under its domain is controlling. Norfolk Holdings v. Department of Revenue, 249 Mont. 40-44, 813 P.2d 460, 462 (1991). In fact, the construction of a statute by the agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong. Red Lion Broadcastina Co. v. FCC, 395 U.S. 367, 381, 89 S.Ct. 1794, 1802, 23 L.Ed.2d 371, 384 (1969).

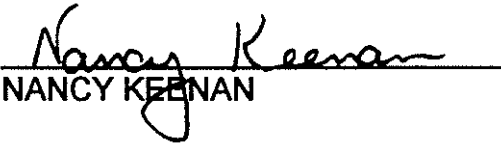
Statutes of limitation are jurisdictional to the tribunal hearing the matter. After the time allowed for appealing a school board's act has passed, neither a County

Superintendent, this Superintendent, nor a Court has the jurisdiction to set aside the board's act. MCI Telecommunications Corp. v. Montana Department of Public Service Regulation, 858 P.2d 364, 260 Mont. 175 (1993). Fuhrman v. Board of Trustees. Garfield County School District No. 1, OSPI 224-93 (1994); Tuma v. Board of Trustees. Sanders County School District No. 6, OSPI 228-93 (1994); Scharler v. Whitehall School District Board of Trustees, OSPI 239-94 (1995).

To extend the limitation period would extend the County Superintendents' jurisdiction over **school** boards beyond that established by § 10.6.103(2), ARM.

The County Superintendent's decision to dismiss this appeal is incorrect as a matter of law and is hereby overruled.

DATED this 18 day of March 1998.

  
NANCY KEENAN

GRANBOIS.255

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 18<sup>th</sup> day of March 1998, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

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GRANBOIS.255